

REMARKS/ARGUMENTS

In response to the Office Action dated August 9, 2005, claims 11 and 24 are amended, claims 1-10 and 16-23 are canceled. Claims 11-15 and 24-27 are now active in this application. No new matter has been added.

The indication that claim 15 is allowable is acknowledged and appreciated.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

I. Claims 11 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants' Admitted Prior Art (AAPA) in view of Suzuki et al. (USPN 4,621,191).

Claims 12 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Suzuki et al., as applied to claim 11, and further in view of Kazama et al. (USPN 5,883,668).

Claims 13 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Suzuki et al., Kazama et al. (USPN 5,883,668), as applied to claim 12, and further in view of Kusaka et al. (USPN 5,589,909).

Claims 14 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Suzuki et al., as applied to claim 11, and further in view of Kusaka et al.

II. The rejections are respectfully traversed.

The point of the rejection of independent claims 11 and 25 is that the present invention would be obvious by adding a structure of a contrast type focus detector to the prior art described in the present specification, i.e., the description in the prior art relating to a three-dimensional data input apparatus.

The invention recited in independent claim 11 includes a structure of “with respect to a plurality of two-dimensionally arranged light-receiving elements, a plurality of types of outputs with different electric charge accumulation times are produced by each of said light-receiving elements, and selecting non-saturated signals among said plurality of types of output signals”.

More specifically, “a plurality of types of outputs with different electric charge accumulation times” is produced by “the same pixel” and “selection is made from among said plurality of types of output signals”.

In other words, the invention recited in independent claim 11 includes a structure of “selecting a specific output from among a plurality of outputs that is produced by the same pixel”.

Suzuki et al. describes that the dynamic range can be increased by changing the accumulation time from T1 to T3. Suzuki et al., however, does not have structure for “selecting a specific output from among a plurality of outputs that is produced by the same pixel”.

Although the Examiner indicates that selection is possible (“can be selected”, page 4, tenth line from the bottom in the Action) of Suzuki et al., Suzuki et al. does not show “selection of output” and merely shows “aspect of output change”. The fact that the Examiner opines that selection is possible clearly evinces improper application of hindsight considerations.

The Examiner should recognize that even if the prior art *could* be modified so as to result in the combination defined by the claims the modification would not have been obvious unless the prior art suggested the desirability of the modification. *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). In the absence of such a prior art suggestion for modification of the references, the basis of the rejection is no more than inappropriate hindsight reconstruction using appellant's claims as a guide. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967).

What may or may not be known in general does not establish the requisite realistic motivation to support the ultimate legal conclusion of obviousness under 35 U.S.C. § 103. *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995). The requisite motivation is not an abstract concept, but must stem from the applied prior art as a whole and have realistically impelled one having ordinary skill in the art, at the time the invention was made, to modify a reference in a specific manner to arrive at a specifically claimed invention with a reasonable expectation of achieving a specific benefit. *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989). It is submitted that the prior art does not meet these criteria for any of the claims under rejection. The question is not what one having ordinary skill in the art could or could not do, but: *why* would one having ordinary skill in the art have been realistically impelled to deviate from the express teachings of the prior art to arrive at the claimed invention? *Gentry Gallery v. Berkline*, 134 F.3d 1473, 45 USPQ2d 1498 (Fed. Cir. 1998); *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).

Thus, independent claim 11 is patentable over AAPA and Suzuki et al., considered alone or in combination.

It is noted that in imposing a rejection under 35 U.S.C. § 103, the Examiner is charged with the initial burden of identifying a source in the applied prior art for claim limitations. Therefore, if the Examiner believes that Suzuki et al. discloses structure that actually selects “a specific output from among a plurality of outputs that is produced by the same pixel”, he is requested to identify the specific portion of Suzuki et al. that describes a structure “selecting a specific output from among a plurality of outputs that is produced by the same pixel”.

The Examiner indicates that independent claim 24 (method claim) has been analyzed and rejected based upon the apparatus claim 11. Accordingly, independent claim 24 is patentable over AAPA and Suzuki et al., considered alone or in combination, for the same reasons that independent claim 11 is patentable over these references.

Claims 12-14 depend directly or indirectly from independent claim 11 and claims 25-27 depend directly or indirectly from independent claim 24. Consequently, claims 12-14 and 25-27 are patentable over AAPA and Suzuki et al. also, even when consider further in view of Kazama et al. and Kusaka et al.

In view of the above, the allowance of claims 11-14 and 24-27 is respectfully solicited.

CONCLUSION

Accordingly, it is urged that the application is in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

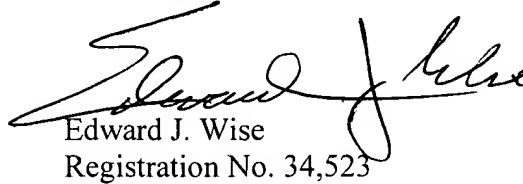
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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